Nº. 800910

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

REYES RIOS RUIZ,

Respondent.

SUPPLEMENTAL BRIEF OF RESPONDENT

REED SPEIR, WSBA No. 36270
Attorney for Appellant
3800 Bridgeport Way Suite A, #23
Tacoma, Washington 98466
(253) 722-9767

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Other Authorities

On May 1, 2009, this court called for supplemental briefing addressing the applicability of *Arizona v. Gant*, 556 U.S.____ (2009), to this case.

For purposes of this Supplemental Brief, Respondent Ruiz adopts and incorporates the facts as set forth in the decision of the Court of Appeals.

A. SUPPLEMENTAL ISSUES

1. How will the decision in *Arizona v. Gant* affect Washington law regarding searches of vehicles incident to the arrest of an occupant of the vehicle?

2. Under *Arizona v. Gant*, was the initial search of the vehicle lawful where the search was conducted as a search incident to the arrest of the driver based on outstanding arrest warrants for the driver?

3. Under *Arizona v. Gant*, was the second search of the vehicle with the drug sniffing dog lawful where the dog was requested based on evidence discovered during the initial search of the vehicle?

B. ARGUMENT

1. *Gant* represents a significant shift in the law regarding searches of vehicles incident to the arrest of an occupant and requires a complete reanalysis of all Washington law regarding vehicle searches under Article 1, § 7 of the Washington Constitution.

a. The history of the vehicle search incident to the arrest of a vehicle occupant warrant exception in Washington.

The Fourth Amendment to the US Constitution provides,

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article 1, § 7 of the Washington Constitution provides "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

Absent an exception to the warrant requirement, a warrantless search is impermissible under both article I, section 7 of the Washington Constitution and the fourth amendment to the United States Constitution. *See State v. Johnson*, 128 Wn.2d 431, 446-47, 909 P.2d 293 (1996).

"A warrantless search by the police is invalid unless it falls within one of the narrow and well-delineated exceptions to the warrant requirement [.]" *Flippo v. West Virginia*, 528 U.S. 11, 120 S.Ct. 7, 8, 145 L.Ed.2d 16 (1999); *State v. Smith*, 119 Wn.2d 675, 678, 835 P.2d 1025 (1992).

"The warrant requirement is especially important under article I, section 7, of the Washington Constitution **as it is the warrant which provides the 'authority of law' referenced therein.**" *State v. Ladson*, 138 Wn.2d 343, 350, 979 P.2d 833 (1999) (emphasis added) (*citing City of Seattle v. Mesiani*, 110 Wn.2d 454, 457, 755 P.2d 775 (1988)).

A warrantless search of constitutionally-protected areas is presumed unreasonable absent proof that one of the few well-established exceptions to the warrant requirement applies. *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967); *Ladson*, 138 Wn.2d at 349, 979 P.2d 833.

i. The search incident to arrest exception to the warrant requirement was created to protect officers who arrest suspects with weapons secreted on or near their person and to prevent destruction of evidence secreted on or near the person of an arrestee.

In *Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969), the United States Supreme Court held that when an individual was arrested, it was reasonable for the arresting officer to search the person arrested in order to remove any weapons the suspect might later use to resist arrest or escape or otherwise injure the officer. *Chimel*, 395. U.S. at 762-763, 89 S.Ct. 2034, 23 L.Ed.2d 685. The *Chimel* court went on to extend the authority of police officers to search the area into which an arrestee might reach in order to grab a weapon or evidentiary items because, "A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested." *Id.*

In *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d

768 (1981), the United States Supreme Court held as a "bright-line rule" that when an arrestee is occupying the passenger compartment of a car at the time of arrest, he might grab a weapon or destroy evidence located anywhere within the compartment, therefore the arresting officer may search the entire passenger compartment, including closed containers, incident to the arrest of the occupant. *Belton*, 453 U.S. at 460, 101 S.Ct. 2860, 69 L.Ed.2d 768. The *Belton* court reached this decision in order to provide police officers affecting arrests a "workable rule" as to the permissible scope of a search of a vehicle incident to the arrest of an occupant. *Belton*, 453 U.S. at 459-460, 101 S.Ct. 2860, 69 L.Ed.2d 768.

In clarifying the permissible scope of a search of a vehicle incident to the arrest of an occupant, the *Belton* court pointed out that "[this] holding...does no more than determine the meaning of *Chimel 's* principles in this particular and problematic content. It in no way alters the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests." *Belton*, 453 U.S. at 460 n. 3, 101 S.Ct. 2860, 69 L.Ed.2d 768.

Thus, the search incident to arrest warrant exception was created in order to protect officers from suspects who may have a weapon on or near their person at the time of arrest and to discover and prevent the destruction of evidence which is on or near the suspect's person at the

time of arrest.

ii. Washington has adopted the Federal standard and reasoning, except for locked containers.

State v. Ringer, 100 Wn.2d 686, 674 P.2d 1240 (1983), *overruled in part by State v. Stroud*, 106 Wn.2d 144, 720 P.2d 436 (1986), was the first post-*Belton* case where the Washington Supreme court addressed the issue of whether or not police could search the passenger area of a vehicle incident to the arrest of an occupant. In *Ringer*, the court ruled that, absent actual exigent circumstances, a warrantless search of a suspect's vehicle was impermissible. The defendant in *Ringer* was lawfully parked in a rest area when two officers discovered that a felony arrest warrant existed justifying the defendant's arrest. The officers ordered the defendant out of his van, arrested him, handcuffed him, and placed him in the back of the patrol car. During this arrest process, the officers noticed a strong odor of marijuana emanating from defendant's van. The officers subsequently searched the van and discovered closed, unlocked suitcases which contained marijuana, cocaine, and other controlled substances.

The Washington Supreme Court held that the search violated article 1, § 7 because, where police had probable cause to search, warrantless searches were permissible only where emergencies or exigencies existed which do not permit reasonable time and delay for a

judicial officer to evaluate and act upon a search warrant application. *Ringer*, 100 Wn.2d at 699-701, 674 P.2d 1240. The *Ringer* court reasoned that "[u]nder the doctrine of exigent circumstances, the totality of circumstances said to justify a warrantless search will be closely scrutinized. The burden is on those seeking the exemption to show that the exigencies of the situation made that course imperative." *Ringer*, 100 Wn.2d at 701, 674 P.2d 1240 (internal citations omitted). Because Ringer had already been arrested, handcuffed, and searched, and because his van was lawfully parked, immobile, and did not impede traffic or threaten public safety, the *Ringer* court held that no exigencies existed and the officers had made no showing that a telephonic warrant could not have been obtained to search the vehicle. *Ringer*, 100 Wn.2d at 703, 674 P.2d 1240.

Thus, post-*Ringer*, the rule under Article 1, § 7 was that, absent actual exigent circumstances, a warrantless search of a suspect's vehicle was impermissible. However, the law soon changed.

In *State v. Stroud*, 106 Wn.2d 144, 148, 720 P.2d 436 (1986), the court revisited the question of vehicle searches incident to the arrest of an occupant and rejected the *Ringer* rule. In overruling *Ringer*, the *Stroud* court was concerned with the ability of police officers to decide whether or not a warrantless search was permissible: "The *Ringer* holding makes it

virtually impossible for officers to decide whether or not a warrantless search would be permissible. Weighing the 'totality of circumstances' is too much of a burden to put on police officers who must make a decision to search with little more than a moment's reflection." *Stroud*, 106 Wn.2d at 148, 720 P.2d 436.

Citing *Belton*, 453 U.S. at 458, 101 S.Ct. 2860, 69 L.Ed.2d 768, the *Stroud* court reasoned

> A highly sophisticated set of rules requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be literally impossible of application by the officer in the field.
>
> We agree with the Supreme Court's decision to draw a clearer line to aid police enforcement, although because of our state's additional protection of privacy rights we must draw the line differently than did the United States Supreme Court.

Stroud, 106 Wn.2d at 151, 720 P.2d 436.

While recognizing that the search incident to arrest exception had been narrowly drawn to address officer safety and prevent the destruction of evidence, the *Stroud* court observed that "because of our heightened privacy protection [under article I, section 7], we do not believe that these exigencies always allow a search." *Stroud*, 106 Wn.2d at 151, 720 P.2d 436. The *Stroud* court rejected the *Ringer* totality of the circumstances test and followed *Belton* except for locked containers:

> During the arrest process...officers should be allowed to search the passenger compartment of a vehicle for weapons or destructible evidence. However, if the officers encounter a locked container or locked glove compartment, they may not unlock and search either container without obtaining a warrant.... [T]he danger that the individual either could destroy or hide evidence located within the container or grab a weapon is minimized. The individual would have to spend time unlocking the container, during which time the officers have an opportunity to prevent the individual's access to the contents of the container.

Stroud, 106 Wn.2d at 152, 720 P.2d 436.

Thus, post-*Stroud*, under article 1, § 7, where an occupant of a vehicle is arrested, police may search the entire passenger compartment of the vehicle, save for locked containers, in order to prevent the suspect from either obtaining a weapon to harm the officers or from destroying evidence, even if these exigent circumstances do not actually exist.

b. The affect of Gant on Washington Law.

In *Arizona v. Gant*, the US Supreme Court held,

> Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.

Gant, 556 U.S.____, *11.

In reaching its decision, the *Gant* court wrote,

> The experience of the 28 years since we decided *Belton* has shown that the generalization underpinning the broad reading of that decision is unfounded. We now know that articles inside the passenger compartment are rarely "within the area into which an arrestee might reach", and blind adherence to *Belton* 's faulty assumption would authorize myriad unconstitutional searches.

Gant, 556 U.S.____, *11.

Gant limits the holding of *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981) and breaks with the nearly 30 years of State and Federal case law holding that when an arrestee is occupying the passenger compartment of a car at the time of arrest, he might grab a weapon or destroy evidence located anywhere within the compartment, therefore the arresting officer may search the entire passenger compartment, including closed containers, incident to the arrest of the occupant. *See Belton*, 453 U.S. at 459-460; *Stroud*, 106 Wn.2d at 152, 720 P.2d 436 ("During the arrest process...officers should be allowed to search the passenger compartment of a vehicle for weapons or destructible evidence. However, if the officers encounter a locked container or locked glove compartment, they may not unlock and search either container without obtaining a warrant...."); *State v. Vrieling*, 144 Wn.2d 489, 492, 28 P.3d 762 (2001) (A search incident to arrest is a well-recognized exception to the warrant requirement).

i. *Arizona v. Gant* effectively overrules *Stroud.*

When the *Stroud* court overruled *Ringer* and adopted *Belton,* the court did so with the following interpretation of *Belton*:

> In recent cases, the United States Supreme Court has enlarged the narrow exceptions to the prohibition in the Fourth Amendment against warrantless searches. The effect has been to make lawful a warrantless search of a passenger compartment of a car, and all containers (luggage, paper bags, etc.) inside it, pursuant to a lawful custodial arrest. *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981).

Stroud, 106 Wn.2d at 152, 720 P.2d 436. In other words, the *Stroud* court interpreted *Belton* as authorizing a search of a vehicle incident to all arrests of an occupant of the vehicle with no regard to the individual facts of the case.

This interpretation of *Belton* was discussed an explicitly rejected in *Gant*:

> Despite the textual and evidentiary support for the Arizona Supreme Court's reading of *Belton*, **our opinion has been widely understood to allow a vehicle search incident to the arrest of a recent occupant even if there is no possibility the arrestee could gain access to the vehicle at the time of the search**. This reading may be attributable to Justice Brennan's dissent in *Belton*, in which he characterized the Court's holding as resting on the "fiction ... that the interior of a car is always within the immediate control of an arrestee who has recently been in the car." 453 U.S., at 466, 101 S.Ct. 2860. Under the majority's approach, he argued, "the result would presumably be the same even if [the officer] had handcuffed Belton and his

companions in the patrol car" before conducting the search. *Id.*, at 468, 101 S.Ct. 2860.

Since we decided *Belton*, Courts of Appeals have given different answers to the question whether a vehicle must be within an arrestee's reach to justify a vehicle search incident to arrest, but Justice Brennan's reading of the Court's opinion has predominated. As Justice O'Connor observed, "lower court decisions seem now to treat the ability to search a vehicle incident to the arrest of a recent occupant as a police entitlement rather than as an exception justified by the twin rationales of Chimel." *Thornton*, 541 U.S., at 624, 124 S.Ct. 2127 (opinion concurring in part). Justice SCALIA [sic] has similarly noted that, although it is improbable that an arrestee could gain access to weapons stored in his vehicle after he has been handcuffed and secured in the backseat of a patrol car, cases allowing a search in "this precise factual scenario ... are legion." *Id.*, at 628, 124 S.Ct. 2127 (opinion concurring in judgment) (collecting cases). Indeed, some courts have upheld searches under *Belton* "even when ... the handcuffed arrestee has already left the scene." 541 U.S., at 628, 124 S.Ct. 2127 (same).

Under this broad reading of *Belton*, a vehicle search would be authorized incident to every arrest of a recent occupant notwithstanding that in most cases the vehicle's passenger compartment will not be within the arrestee's reach at the time of the search. To read *Belton* as authorizing a vehicle search incident to every recent occupant's arrest would thus untether the rule from the justifications underlying the *Chimel* exception- a result clearly incompatible with our statement in *Belton* that it "in no way alters the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests." 453 U.S., at 460, n. 3, 101 S.Ct. 2860. **Accordingly, we reject this reading of *Belton* and hold that the *Chimel* rationale authorizes police to search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance**

of the passenger compartment at the time of the search.

Gant, 556 U.S.____, *7 (emphasis added).

Thus, *Stroud* was based on an interpretation of *Belton* which has been explicitly rejected by the US Supreme Court in *Gant*. This court should overrule *Stroud* based on *Gant*.

ii. Post-*Gant*, this court should return to the *Ringer* analysis of the lawfulness of searches of vehicles incident to the arrest of an occupant under article 1, § 7.

As discussed above, prior to *Stroud*, *Ringer* governed the law regarding searches of vehicles incident to the arrest of an occupant. Under *Ringer*, the law was that, under Article 1, § 7, absent actual exigent circumstances, a warrantless search of a suspect's vehicle was impermissible. *Ringer*, 100 Wn.2d at 699-701, 674 P.2d 1240.

Post-*Gant*, a return to this standard is logical. Under *Ringer*, unless exigent circumstances (in other words some exception to the warrant requirement) existed when the totality of the situation known to the arresting officers is considered, warrantless searches of a vehicle incident to the arrest of an occupant violated article 1, § 7. Under *Gant*,

> Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless

police obtain a warrant or show that another exception to the warrant requirement applies.

Gant, 556 U.S.____, *11.

In effect, *Gant* and *Ringer* require the same test to determine whether the search of a vehicle by an arresting officer following the arrest of an occupant of the vehicle is lawful- unless some exception to the warrant requirement exists, police officers must obtain a warrant prior to searching the passenger compartment of a vehicle following the arrest of an occupant of that vehicle. *Gant* was decided under the 4th Amendment and *Ringer* was decided under Article 1, § 7, but, given that Article 1, § 7 of the Washington Constitution provides greater protection to individual privacy rights than the Fourth Amendment (*State v. Hendrickson*, 129 Wn.2d 61, 69 n. 1, 917 P.2d 563 (1996); *State v. Williams*, 102 Wn.2d 733, 741-42, 689 P.2d 1065 (1984)), a search which is unlawful under the 4th Amendment is per se unlawful under Article 1, § 7. By the same logic, the test used for the lawfulness of a search under Article 1, § 7 can be no less stringent than the test used to determine the lawfulness of a search under the 4th Amendment.

Gant and *Ringer* propound the same test for determining the lawfulness of the search of a vehicle incident to the arrest of an occupant of that vehicle. Because *Stroud* was based on an incorrect interpretation

of *Belton*, this court should overrule *Stroud* and return to the analysis mandated by *Ringer* as the proper test for judging the lawfulness of the search of a vehicle incident to the arrest of an occupant of that vehicle under Article 1, § 7.[1]

iii. This court should clarify that police agencies may not attempt to subvert *Grant* by engaging in increased vehicle impoundment and inventory searches.

Under Washington law, "police officers may conduct a good faith inventory search following a lawful impoundment without first obtaining a search warrant" and may lawfully impound a vehicle if authorized to do so by statute. *State v. Bales*, 15 Wn.App. 834, 835, 552 P.2d 688 (1976), *review denied,* 89 Wn.2d 1003 (1977). An officer may not, however, resort to an inventory search as a "device and pretext for making a general exploratory search of the car without a search warrant." *State v. White*,

[1] Other post-*Stroud* Washington cases support returning to the *Ringer* standard. *See State v. Hall*, 53 Wn.App. 296, 302-04, 766 P.2d 512, *review denied*, 112 Wn.2d 1016 (1989) (a warrantless search may not be justified if the suspect or evidence is under the control of the police so that they may prevent its destruction); *State v. White*, 129 Wn.2d 105, 112-113, 915 P.2d 1099 (1996) ("The validity of a search incident to arrest depends upon the existence of exigent circumstances such as the need to seize weapons which the arrestee may seek to use to resist arrest or escape or the need to prevent the destruction of evidence of the crime"); *State v. Rathbun*, 124 Wn.App. 372, 380, 101 P.3d 119(2004) ("Contrary to the State's position, the ability to search a vehicle incident to the arrest of a vehicle's occupant is not a police entitlement justifying a rule that police may search a vehicle incident to arrest regardless of how far a suspect is from the vehicle. If a suspect flees from a vehicle so that the vehicle is no longer within his or her immediate control at the time of arrest, the exigencies supporting a vehicle search incident to arrest no longer exist and there is no justification for the police to search the vehicle without first obtaining a warrant...[B]ecause Rathbun was not in close proximity to his truck when he was arrested, the officers were not justified in conducting a warrantless search of the vehicle.")

135 Wn.2d 761, 770, 958 P.2d 982 (1998) (*quoting State v. Montague*, 73 Wn.2d 381, 385, 438 P.2d 571 (1968)).

It is anticipated that, in response to *Gant*'s limitation on the ability of police to search a vehicle incident to the arrest of an occupant, police agencies will, instead, engage in liberal and broadened automobile impound procedures in order to conduct searches of those vehicles under the guise of inventory searches.

As the court held in *Gant*,

> A rule that gives police the power to conduct such a search whenever an individual is caught committing a traffic offense, when there is no basis for believing evidence of the offense might be found in the vehicle, creates a serious and recurring threat to the privacy of countless individuals. Indeed, the character of that threat implicates the central concern underlying the Fourth Amendment-the concern about giving police officers unbridled discretion to rummage at will among a person's private effects.

Arizona v. Gant, S.Ct. ----, 2009 WL 1045962 (2009), * 8.

A rule allowing police agencies to avoid *Gant*'s prohibition of warrantless vehicle searches and, instead, conduct pretextual inventory searches is precisely the sort of rule the *Gant* court warned would give police "unbridled discretion to rummage at will among a person's private effects." Any such attempts by law enforcement to avoid the warrant requirement to search a vehicle by engaging in pretextual impoundment of that vehicle would be unlawful. This court should take this opportunity to

emphasize and clarify the law that an inventory search conducted pursuant to the impound of a vehicle may not be used as a "device and pretext for making a general exploratory search of the car without a search warrant."

2. All searches of the vehicle were unlawful under *Arizona v. Gant*.

As is discussed above, post-*Gant*, *Stroud* is no longer good law. Police may no longer automatically search the passenger compartment of a vehicle following the arrest of an occupant of the vehicle. Post-*Gant*, the Fourth Amendment to the US Constitution permits searches of the passenger compartment of a vehicle

> only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.

Gant, 556 U.S.____, *11.

a. The search of the vehicle in this case is unlawful under Gant since neither occupant of the vehicle was within reaching distance of the passenger compartment of the vehicle.

In this case, the police performed two searches on the vehicle in which Mr. Ruiz was a passenger: one search was performed incident to the arrest of Mr. Valdez on outstanding arrest warrants, and one search with a drug dog performed based on evidence discovered during the first search

of the vehicle.

At the time of the first search of the vehicle, police had arrested Mr. Valdez and placed him in the back of a patrol vehicle. CP 36. A second police officer arrived on scene and the police officers then asked Mr. Ruiz to exit the vehicle while it was searched. CP 36. Thus, neither Mr. Valdez nor Mr. Ruiz were within reaching distance of the interior of the vehicle. Therefore, under *Gant*, the search of the vehicle was unlawful under the 4th Amendment. Given that Article 1, § 7 of the Washington Constitution provides greater protection to individual privacy rights than the Fourth Amendment (*State v. Hendrickson*, 129 Wn.2d 61, 69 n. 1, 917 P.2d 563 (1996); *State v. Williams*, 102 Wn.2d 733, 741-42, 689 P.2d 1065 (1984)), a search which is unlawful under the 4th Amendment is also per se unlawful under Article 1, § 7.

b. The search of the vehicle in this case is unlawful under Gant since there was no reason to believe that evidence of the crime of arrest would be found inside the vehicle.

Mr. Valdez was arrested on outstanding arrest warrants. Under *Gant*, police may conduct a warrantless search of a vehicle incident to the arrest of an occupant only if it is "reasonable to believe the vehicle contains evidence of the offense of arrest." *Gant*, 556 U.S.____, *11.

Because Mr. Valdez was arrested on outstanding warrants, there

was no reason for the police to believe that evidence of the fact that Mr. Valdez had outstanding arrest warrants would be found in the vehicle. Therefore, the search was unlawful under *Gant*.

3. The search of the vehicle with the dog was unlawful since the search was based on evidence discovered pursuant to the first unlawful search of the vehicle.

Evidence obtained directly or indirectly through exploitation of an unconstitutional police action must be suppressed, unless the secondary evidence is sufficiently attenuated from the illegality as to dissipate the taint. *Wong Sun v. United States*, 371 U.S. 471, 491, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

The drugs found in the minivan were discovered during the second search of the vehicle and where the police used a drug sniffing dog. The search with the dog which revealed the drugs was unlawful for many reasons: (1) the basis for the second search was evidence discovered pursuant to the first search which was unlawful under *Gant*, rendering the evidence discovered pursuant to the second search inadmissible as "tainted" evidence derived from an unlawful search; (2) the search with the dog was, itself, an unlawful search under *Gant*; and (3) the search with the dog exceeded the permissible scope of a search incident to arrest. For any of these reasons, the search of the vehicle with the dog was unlawful and evidence discovered pursuant to the second search was inadmissible.

D. CONCLUSION

In reaching its decision, the *Gant* court wrote,

> The experience of the 28 years since we decided *Belton* has shown that the generalization underpinning the broad reading of that decision is unfounded. We now know that articles inside the passenger compartment are rarely "within the area into which an arrestee might reach", and blind adherence to *Belton* 's faulty assumption would authorize myriad unconstitutional searches.

Gant, 556 U.S.____, *11.

The searches conducted by police in this case are precisely the sort of searches the US Supreme Court wished to prevent in *Gant*. At the time of both searches, the arrestee, Mr. Valdez, was securely in the back of a police vehicle. Further, because Mr. Valdez was arrested for outstanding warrants, there was no reason for the police to believe that evidence of the crime of his arrest would be found inside the vehicle. Both searches of the minivan in this case were unconstitutional under *Gant*. Accordingly, all evidence discovered pursuant to the searches must be suppressed. If the evidence of the drugs is suppressed, the State presented insufficient evidence to convict Mr. Ruiz of any crime.

DATED this 6th day of May, 2009.

Respectfully submitted

Reed Speir, WSBA No. 36270
Attorney for Respondent

CERTIFICATE OF SERVICE

Reed Speir hereby certifies under penalty of perjury under the laws of the State of Washington that on the 6th day of May, 2009, I delivered a true and correct copy of the Supplemental Brief of Respondent to which this certificate is attached by United States Mail, to the following:

Michael C. Kinnie
Clark County Deputy Prosecuting Attorney
P.O. Box 5000
Vancouver, WA 98666

Signed at Tacoma, Washington this 6th day of May, 2009.

Reed Speir, WSBA No. 36270